

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9**

AMANO CINCINNATI, INC.

Employer

and

Case 9-RC-18323

IUE-CWA LOCAL 84755

Petitioner

**ACTING REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

I. INTRODUCTION

The Employer is a corporation engaged in the assembly of parking industry fixtures and time recording devices at its facility in Loveland, Ohio. The parties stipulated at the hearing that any unit should include all production and production support employees employed by the Employer at its plant at 130 Commerce Blvd., Loveland, Ohio and exclude all office clerical employees, all sales, training and service employees, all engineering employees, all technicians, all purchasing employees, all managers and administrators and professional employees, guards and supervisors as defined by the Act. However, the Employer, contrary to the Petitioner, asserts that the Petitioner is barred from participating in an election based upon the terms of my September 20, 2010, Order Revoking Certification of Representative, Cancelling Election and Approving Withdrawal of Petition in Case 9-RD-2206.

I have fully considered the arguments of the parties at the hearing as well as their post-hearing briefs. As fully discussed below, I find, based on the record as a whole that my September 20, 2010, order does not disqualify the Petitioner or block the petition in this case and I will direct an election.

To provide a context for my discussion of the issues, I will first provide the background of the bargaining history and relationships of the relevant parties. I will then present, in detail, the facts and reasoning that support my conclusion on the issue.

II. THE PARTIES' BARGAINING HISTORY

I take administrative notice that the case file in Case 9-RD-2206 contains two certifications. On May 13, 1960, the Region issued a Certification of Representative in Case 9-RC-4404 certifying the International Union of Electrical Radio and Machine Workers, AFL-CIO as the exclusive collective bargaining representative of certain of the Employer's employees.

The file also contains another certification dated May 31, 1977 for the International Union of Electrical Radio and Machine Workers, AFL-CIO-CLC and its Local 776.

The testimonial evidence from the hearing of this matter discloses that sometime around 2001, a representative of the Union's International office notified the Employer that Local 776 was being dissolved and the employees would thereafter be represented by the International and Local 774. The Employer recognized and bargained with this labor organization. In the parties' most recent collective bargaining agreement, effective by its terms from March 12, 2005 through November 5, 2010, the International Union of Electronic, Electrical, Salaried, Machine, Furniture, and Communications Workers of America (hereinafter the International), and its Local #774^{1/} are referred to as the employees' representative. The bargaining unit in that collective bargaining agreement is described in substantially the same fashion as the bargaining unit petitioned for in the instant matter. There are presently about 47 employees in the unit. Local 774 President Rick Snow signed the contract on behalf of the International and its Local 774 and Snow was the Employer's main contact with the Union in August of 2010. The Employer is one of several employers with whom Local 774 has a collective bargaining relationship.

Section 20.1 of the collective bargaining agreement provides that a party must give written notice between 120 days and 90 days prior to the expiration of the collective bargaining agreement if it seeks to amend, modify or terminate the agreement. Sometime after this time period expired in 2010, Snow called Human Resources Manager Paul Kattelman and stated that he had forgotten to give notice of Local 774's desire to renegotiate the collective bargaining agreement. However, on August 10, 2010, Moulaye Ismail Diakite, an individual, filed a petition to decertify the International Union and Local 774 as the collective bargaining representative of the bargaining unit employees in Case 9-RD-2206. On August 15, 2010, Snow, Gary McGuire of the International and Willie Thorpe, Regional Director IUE-CWA, Region 7, met with Kattelman. Snow, McGuire and Thorpe advised that the Union had missed the deadline for notifying the Employer of its intent to renegotiate the contract.

On August 20, 2010, I approved a stipulated election agreement and scheduled an election to be held on September 21, 2010, in Case 9-RD-2206. McGuire signed the stipulated election agreement on behalf of the International and its Local 774.

On August 25, 2010, IUE-CWA Region 7 Director Thorpe sent a letter to Kattelman notifying him that IUE-CWA Local 84755 would now be representing the employees at the Employer's facility. The letter provided contact information for James Winship, Local 84755's President, and Business Agent Kaine Goodwin.^{2/} It also advised that McGuire would continue to be the International's staff representative for the facility. Enclosed with the letter was a "Revision of Local Charters" which purported to revise the charters of Local 774 and 84755 to reflect that effective August 1, 2010, Local 84755 rather than Local 774 represented the employees of the Employer.

^{1/} The legal name of Local No. 774 is Local 84774, but the parties commonly omit the first two numbers. The numeral 8 shows that the local is an IUE local and the numeral 4 refers to its inclusion within CWA District 4.

^{2/} It appears that McGuire previously introduced Kattelman to Winship and Goodwin at the Employer's facility on about August 17, 2010.

The record discloses that Local 84755 is another Local of the International. It has its own officers, who are different than those of Local 774. It represents employees of various employers and there is no overlap among the employers represented by Local 84755 and those represented by Local 774. Local 84755 holds monthly meetings at its building. Neither the International nor any other locals participate in these meetings.

On August 26, 2010, Winship sent an e-mail to Kattelman requesting time to meet with the employees to discuss the pending decertification petition. That same day, Goodwin sent an e-mail to Kattelman requesting a time to tour the facility. Sometime after August 25, Winship, Goodwin and stewards of Local 774 met with Kattelman to discuss the status of a workers' compensation claim and other matters. At that meeting or another, Kattelman discussed an issue with the Local 755 officials about whether the Employer provided an educational assistance benefit to employees without first bargaining. No one from Local 774 or the International attended those meetings. On September 7, 2010, Winship sent an e-mail to Kattelman, referring to Local 84755 as the "new representatives for the IUE-CWA members at [the Employer]." Winship requested a tour of the facility and a meeting to discuss safety.

On September 10, 2010, Kattelman sent a letter to Thorpe stating that in his opinion the attempted transfer of jurisdiction over the Employer's employees from Local 774 to Local 84755 was unlawful. Kattelman stated that the Employer did not recognize Local 84755, but would continue to recognize Local 774 and the International Union as the representatives of the bargaining unit. Kattelman enclosed, unsigned by the Employer, two memoranda of understanding previously proposed by Local 84755: one to change all references from Local 774 in the collective bargaining agreement to Local 84755 and the other dealing with tuition assistance. The Employer never remitted union dues to Local 84755.

On September 17, 2010, the International Union and its Local 774, in writing, disclaimed any further interest in representing the employees in the bargaining unit. On that same date, Diakite, the decertification petitioner, orally requested to withdraw the petition in Case 9-RD-2206. On September 20, 2010, I issued an order revoking the Certification of Representative issued in 9-RC-4404 and declaring that the International Union and its Local 774 no longer were the exclusive representatives of the Employer's bargaining unit employees.^{3/} Kattelman subsequently instructed Peggy Osborne, the former Local 774 Chief Steward, to remove the union bulletin board. On September 30, 2010, Kattelman issued final payment to Local 774 for union dues and contributions and the Petitioner filed the petition at issue herein, accompanied by the requisite showing of interest.

The constitutions of the International and IUE-CWA Local 84755, respectively, delineate the Local's relationship with the International. Local 84755's constitution provides that it is an autonomous organization affiliated with the International, appropriate District Councils and local AFL-CIO councils. The International's constitution provides that the constitutions of its locals may not conflict with it and, to the extent that there is a conflict, the terms of the International's constitution prevail. The Local's constitution forbids engaging in conduct in conflict with the

^{3/} Local 84755 did not intervene in Case 9-RD-2206.

codes of ethical practice of the International or the AFL-CIO. The Local's constitution also prohibits engaging in activity detrimental to the Local or the International. Members of the Local must also be members in good standing of the International. When the Local receives dues, it is required to forward the dues to the International, which then returns the Local's share of the dues to it. The International sets minimum dues, but the Local is permitted to set higher dues. Eligibility to hold office in the Local is determined, in part, by the International's rules and the International sets the terms of office for the Local officials. Only members in good standing with the International are eligible to be nominated as the Local's officers or serve as members of the Local's election committee. The International's rules determine who is eligible to vote in the Local's internal elections.

The enumerated duties of the Local's officers also reflect their responsibilities to the International. The Local president's duties include enforcing the constitutions of both the Local and the International. The Local president is required to mail a trustees' report on the financial status of the Local to the International's secretary/treasurer. The Local president is also obligated to inform the International of charges or lawsuits filed against the Local. Similarly, the Local's financial secretary is obligated to furnish a semi-annual financial report to the International's secretary/treasurer and to secure an annual audit from a qualified accountant to be sent to the International. The International makes the final decision regarding certain issues, such as strikes and internal union discipline. For example, the Local is not permitted to strike without authorization of the International's president. If members of the Local engage in an approved strike, they are eligible to receive benefits from the International's strike fund. A portion of the members' dues goes to the strike fund. Members of the Local who are subjected to discipline by the Local can appeal to the International, with the International making the final decision. The Local also has access to the International's legal staff.

Despite the importance of the relationship between the Local and the International, there is a factual basis to support the portion of the Local's constitution that declares it to be an autonomous organization. In this regard, the International's constitution does not dictate the terms that its various locals can obtain in collective bargaining with employers. Because of this, it is clear that the various locals of the International are empowered to obtain entirely different results from one another in collective bargaining. Local 84755 President Winship testified at the hearing that if Local 84755 were to be elected, neither the International nor Local 774 would be involved in negotiations with the Employer. Winship and Business Agent Goodwin have worked together in the past and Goodwin usually handles negotiations on behalf of Local 84755.

III. LEGAL ANALYSIS

Section 11124.2 of the National Labor Relations Board Casehandling Manual (Part Two) Representation Proceedings deals with the effects of a union's disclaimer of interest. It provides, in relevant part, that "any petition filed by [the disclaiming union] within 6 months from this date will not be entertained unless good cause is shown to the contrary."⁴ Another section of the

⁴/ I find no need to determine whether good cause was shown to entertain the instant petition since this provision only applies when the union that disclaimed interest petitions within 6 months. As explained below, I find that the petitioner here is a different labor organization than the one that disclaimed interest.

Casehandling Manual, Section 11118, pertains to withdrawal of petitions and more fully explains the 6 month prejudice period. I can find no reason that the rationale of that section would not apply to situations involving disclaimers of interest similar to the situation presented here. Like Section 11124.2, Section 11118 provides that “a withdrawal with prejudice will carry the condition that it is granted with prejudice to the filing of a new petition encompassing the same or substantially the same unit of employees involved for a period of 6 months, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration date of such period.” The Manual explains that the purpose of this provision is to conserve the Agency’s resources by discouraging repetitive and duplicative filings. Significantly, Section 11118 also provides that “prejudice runs only to the petitioner and does not preclude petitions filed by other unions, including other locals of the same International, or by a joint petitioner that includes the original organization.”

Under the reasoning of the Casehandling Manual, the 6 month prejudice period would not apply to Local 84755, a local of the International separate and distinct from Local 774. Cf *Swift and Co.*, 125 NLRB 1408 (1959) where the Board found that the petitioner was merely fronting for another union. The record contains ample evidence to conclude that each Local is a separate labor organization. Each Local existed prior to the instant dispute and represents employees from different employers. There is no reason to doubt that each Local continues to exist and to fulfill its collective bargaining obligations to its respective members and represented bargaining units. Each Local has its own officers who are empowered to negotiate whatever contract terms they are capable of attaining in collective bargaining, largely unfettered by any rules from the International. The Locals meet separately from one another.

Contrary to the Employer’s assertion, I find that the parties’ respective actions when Local 84755 attempted to take over representation for Local 774 bolster the argument that the two unions are separate and distinct. The fact that the Employer refused to recognize Local 84755 as the representative of its employees demonstrates that it viewed this Local as a different labor organization than the one it was obligated to recognize – not just another arm of the International as it now claims. Indeed, in refusing to recognize Local 84755, the Employer relied on the Board’s decision in *Goad Co.*, 333 NLRB 677 (2001). The reasoning of *Goad*, however, is that one labor organization cannot simply transfer its representational duties to another. It is axiomatic that there must be two labor organizations for *Goad* to apply. Although the Employer attempts to finesse this issue by claiming that Local 84755 is distinct from Local 774, but not from the International, logically this attempt must fail since the Employer also argues that the International and its locals are, in essence, one and the same.

Under the facts and circumstances presented in this case, I do not find that the instant petition is repetitive or duplicative. The purpose of the 6-month prejudice period is to preserve Agency resources – not to protect employers or to create any rights not embodied in the statute. I do not find that processing the instant petition to an election would, in any way, be wasteful of Agency resources. To the contrary, I find that the interests of the employees are best served by permitting the Petitioner, which has made an appropriate showing of interest, to proceed to election so that the employees may choose to accept or reject the Petitioner as their representative for purposes of collective bargaining.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above discussion, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. ^{5/}
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and production support employees employed by the Employer at its plant at 130 Commerce Blvd., Loveland, Ohio, excluding all office clerical employees, all sales, training and service employees, all engineering employees, all technicians, all purchasing employees, all managers and administrators and professional employees, guards and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by IUE-CWA Local 84755. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which

^{5/} At the hearing, the parties stipulated that during the past 12 months, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 from its Loveland, Ohio facility directly to commercial customers located outside the State of Ohio. Accordingly, I am satisfied that the Employer's operations meet the Board's statutory and discretionary standards for asserting jurisdiction.

commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 5, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **November 12, 2010**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 29th day of October 2010.

A handwritten signature in black ink, appearing to read "Garey E. Lindsay", written in a cursive style.

Garey E. Lindsay, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Classification Index

332-7580-6000

339-7562-0000